

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 518 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CAMA HOTELS LIMITED

Versus

NAZEER WELDINGWALA-PROP. HONEYCOMB INTERNATIONAL

Appearance:

MR RD DAVE for Petitioner

MR KV SHELAT for Respondent No. 1

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 08/04/96

ORAL JUDGEMENT

1. Rule. Mr.K.V.Shelat appears for respondent and waives service of rule on behalf of respondent. With the consent of learned advocates appearing for the parties matter is finally heard and decided today.

2. This CRA is directed against the concurrent judgments and orders of the Ld.Small Causes Court judge

and the appellate bench of the Small Causes Court passed below Exh.53 and confirmed in AO No.2/94. By the impugned order the trial judge granted application at Exh.53 and restrained the plaintiff, his servants and agents from closing the Southern gate before 10.00 p.m. till the final disposal of the suit. Appeal against such order has failed. However, during the pendency of such application before the appellate bench of the Small Causes Court at Ahmedabad by way of interim arrangement it was agreed between the parties that the plaintiff shall close the Southern gate by 9.00 p.m.

3. Now when the appeal is dismissed the plaintiff has come to this court against the impugned order passed by the two courts below. After hearing Mr.R.D.Dave, Ld.advocate for petitioner and Mr.K.V.Shelat, Ld.advocate for respondent on caveat it appears that the controversy is as to the timing by which the Southern gate should be closed. Other matters or controversies are not required to be settled at this stage as they would be decided at the time of trial. Both the parties have after making their elaborate submissions ultimately left the issue to the discretion of this court as to the time by which the plaintiff shall be entitled to close the Southern gate. Having heard both the parties, I am of the opinion that if the following direction is issued below exh.53 during the pendency of suit, the same shall serve the ends of justice:

"The plaintiff, his servants and agents
etc. are hereby restrained from closing
the Southern gate before 9.15 p.m. till
the final disposal of the suit."

4. The order of the lower appellate court is substituted by the aforesaid order. Since the order is passed at the consensus of the parties as the parties have left the matter to the discretion of this court, this CRA shall have to be construed as decided on merits. Rule is made absolute accordingly. No costs.

...